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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,087	10/23/2003	David M. Stravitz	02271C2/LH	8472

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NEW YORK, NY 10017-2023

EXAMINER

PARADISO, JOHN ROGER

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/693,087

Applicant(s)

STRAVITZ

Examiner

John R Paradiso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.  
2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) 27 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23, 4/5, 7/7</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-26, drawn to a cartridge for a waste disposal device, classified in class 53, subclass 138.1.
  - II. Claim 27, drawn to a method for using a cartridge in a waste disposal device, classified in class 53, subclass 459.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a method that does not involve reloading with “a second, replacement length of tubing”, as claimed in claim 27 of Invention II.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 27 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over RICHARDS ET AL, as set forth in paragraph 2 of the previous Office Action.

Regarding claim 19, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plastic for the casing to increase durability and cardboard for the cover to make it easier to open, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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Regarding claim 26, RICHARDS ET AL clearly shows the edge of the cartridge cover (72) in RICHARDS ET AL covers only part of the cartridge and flexes out of the way to provide access (see RICHARDS ET AL Figure 1), so it is at least partially separate from the casing.

Regarding claims 25 and 26, the securing of containers with releasable means such as hook and loop fasteners is notoriously well known in the art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of RICHARDS ET AL so that the cover of the cartridge is releasably attached with hook and loop fasteners to make it easier and quicker for a user to access the tubing.

### ***Response to Arguments***

8. Applicant's arguments filed 2/1/2005 have been fully considered but they are not persuasive.

9. Applicant states on page 14 of his Response that "a distinction must be made between techniques for closing a waste-containing refuse or trash bag ... and the pre-forming of a closure at the front end portion of a length of flexible tubing."

However, since the claimed operation involves securing the open end of a bag designed for refuse, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use whichever of the claimed fastening methods most appealed to consumers, since knotting (as disclosed in RICHARDS ET AL), stitching, hook and loop fastening, and tie and clasp fastening are all art-recognized equivalents for the secure closing of trash bags.

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10. Applicant states on pages 14-15 of his Response that “Second, the asserted equivalence of the different techniques to close a waste-containing bag are not proper modifications of the flexible tubing of Richards et al” since with a trash bag the “closing techniques relate to the formation of a closure at the rear end portion of a bag”; “by contrast, in Richards et al. it is the front end of the flexible tubing which is manually tied to create a bag prior to the insertion of waste..”

However, as stated in paragraph 9 above, since the claimed operation involves securing the open end of a bag designed for refuse, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use whichever of the claimed fastening methods most appealed to consumers.

11. Applicant states on page 16 of his Response that “a cartridge including a weakened portion on a cover is not disclosed, taught or suggested by Richards et al.”

However, since the edge of the cartridge cover (72) in RICHARDS ET AL covers only part of the cartridge and flexes out of the way to provide access (see RICHARDS ET AL Figure 1), it is by definition a weakened portion.

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12. Applicant states on page 17 of his Response that “Richards et al. does not provide any suggestion or motivation to make the ring 72 of a different material than the core 1, namely cardboard, to facilitate its bending..”

This point is addressed in the rejection above.

13. Applicant states on page 18 of his Response that “The Examiner takes a position that the use of lines of separation to demarcate separation points for rolls of plastic bags is well-known in the art..” and “Examiner’s position is respectfully traversed on the grounds that the claimed embodiment of the invention and Richards et al. do not include ‘rolls of plastic bags’ ... Rather, Richards et al. and the embodiment ... related to a length of flexible tubing which defines a continuous passage between the front and rear ends.”

However, the “length of flexible tubing” in the instant invention is used to make individual refuse containers, like trash bags.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

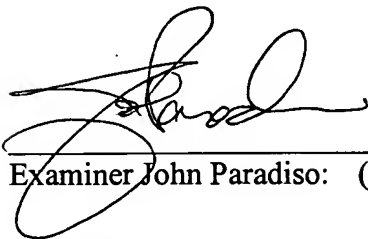
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.



Examiner John Paradiso: (703) 308-2825

May 1, 2005

Additional Phone Numbers:

Supervisor Rinaldi Rada: (703) 308-2187  
TC 3700 Receptionist: (703) 308-1148  
Customer Service: (703) 306-5648  
Fax (directly to Examiner) (703) 746-3253  
Fax (Official): (703) 872-9306